Q. "All contracts are agreements, but all agreements are not contracts." Discuss

Section 2 (h) defines '**Contract**' as an agreement enforceable by law.

If we analyse the definition it has two components viz. (i) an agreement and (ii) its enforceability by law.

Section 2 (e) defines '**agreement**' as "every promise and set of promises forming consideration for each other"

For a contract to be enforceable by law there must be an agreement which should be enforceable by law. To be enforceable, the agreement must be coupled with obligation. Obligation is a legal duty to do or abstain from doing what one promised to do or abstain from doing.

All contracts are agreements but for agreement to be a contract it has to be legally enforceable.

Section10 of the Act provide " All agreements are contracts if they are made by the free consent of the parties competent to contract for lawful object & are not hereby expressly declared void."

All contracts are agreements but for an agreement following essential element are required –

a) **Offer & Acceptance** :- There must be two parties to an agreement i.e one making the offer & other party accepting it. Acceptance of must be unconditional & absolute. A part of an offer cannot be accepted. The terms of an offer must be definite. The acceptance must be in the mode as prescribed & must be communicated. The acceptor of an offer must accept it in the same way & same sense & at the same time as offered by the offeror i.e there must be *consensus ad idem.*

b) **Intention to create legal relationship** :- When two parties enter into a contract their intention must be to create legal relationship. If there is no such intention between the parties there is no contract between them. Agreements of a social or domestic nature to do, not constitute contracts. For e.g. in Balfour Vs. Balfour a husband working in Ceylon had agreed in writing, to pay a housekeeping allowance to his wife living in England. He found out that she was unfaithful to him, he discontinues the allowance. *Held*, he was entitled to do so. This was merely a domestic arrangement & not with an intention to create legal relationship, so it was not a contract.

c) **Lawful consideration** :- An agreement to be enforceable by law must be supported by consideration. "Consideration" means an advantage or benefit which one party receives from another. It is the essence of bargain. The agreement is legally enforceable only when both parties give something or get something in return. An agreement to do something without getting anything in return is not a contract. Contract must be in cash or kind. It may be an act to do something or abstaining from doing something in return. Consideration may be past, present or future.

d) **Capacity to Contract – Competency** :- The parties competent to contract must be capable of contracting i.e they must be of the age of majority, they must be of sound mind & they must not be disqualified from contracting by any law to which they are subject to. An agreement with minors, lunatics, drunkards, etc. are not contract & does not get a legal title.

e) **Free & Genuine Consent** :- It is necessary between the contracting parties to have a free & genuine consent to an agreement. The consent of parties is said to be free when the contracting parties are of the same mind on the materials of a contract. They must mean the same thing at the same time the parties must not enter into a contract under undue influence, coercion, misrepresentation etc. If these flaws are present in an agreement it does not become a contract.

f) **Lawful object** :- The object of an agreement must be lawful. It should not be illegal, immoral or it should not oppose public policy. If an agreement suffers from a legal flaw with respect to object it is not enforceable by law & so it is not a contract.

g) **Agreement not declared void** :- For an agreement to be a contract it is necessary for the agreement must not be expressly declared void by any law in force in the country.

h) **Possibility & Certainty of performance** :- The terms of an agreement must not be vague or indefinite. It should be certain. The agreement must be to do a thing which is possible. For e.g An agreement to sell a car for Rs. 100/- if sun does not rise tomorrow. This agreement is impossible & so not enforceable by law.

Thus, *agreement is the genus of which contract is the specie.*

Q. Define the term 'Offer' and explain Rules thereto.

Section 2 (a) defines a proposal as "When one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the asset of that other to such act or abstinence."

The person making the offer is known as the ***Offeror or Promisor*** and the person to whom it is made is called the ***Offeree*** or ***Promisee*** [**Section 2(c)**]

For e.g. A says to B, "Will you purchase my flat at Andheri for Rs.20 Lacs? Here A is the promisor and B is the promises.

<u>Rules as to Offer</u> –

1. **Intention to create legal relationship –** The Offeror while making the offer must do it with the intention to create legal relations. Offeror must be conscious that a contract will arise, if the Offeree accepts the same.

2. **Certain or Unambiguous –** The terms of the Offer to be valid must be certain, clear and unambiguous.

   For eg. A offers to sell B, ten tones of oil. A is a dealer of various oil. Here the offer is ambiguous as the offer does not specify the type of oil. However, if A was a dealer only in Parashute Coconut oil then the offer is unambiguous.

3. **Offer must be distinguished from –**

(i) **A declaration of intention –** A declaration by a person that he intends to do something gives right of action to another. Such a declaration only means that an offer will be made or invited in future and not that an offer is made now.

For eg. H telephones to F asking the latter to inform him whether he would sell Bumper Hall Pen and if so, at what price. F informed H that the lowest price was $900 without stating that he was willing to sell at that price. H telegraphed that he would buy at that price. F gave no reply to the telegram. It was held that there was no contract because there was no offer from F to H. ***[Harvey v. Facey]***.

(ii) **An invitation to make an offer or do business –** Display of goods by a shopkeeper in his window, with prices marked on them, is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked prices. A buyer, in case the prices of the goods are marked, cannot force the seller to sell the goods at those prices. He can, at the most, ask the seller to sell the goods to him, in which case he is making an offer to the seller and it is upto the seller to accept the offer or not. Likewise, quotations, menu card, catalogues, prospectus issued y a company for subscribing to shares are all example of an invitation to make an offer.

4. **Offer must be to a definite person –** The words of an Offer must apply to definite persons or class of persons to create a legal relationship.

5. **Offer must be communicated –** An offer, to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated, there can be no acceptance of it.

   For eg. Gauri Dutt's nephew absconded from home and could not be traced. She sent Lalman Shukla, his servant, to Haridwar to look for the boy. Meanwhile she offered a reward of Rs.501/- to the finder of the boy. L traced the boy in ignorance of the offer. Later when he came to know of the reward, he claimed it. *Held*, he was not entitled to the reward as he was not aware of the offer. ***[Lalman Shukla vs Gauri Dutt***].

6. **Offer must be made with a view to obtaining the assent –** The offer to do or not to do something must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

7. **Special Terms to be made clear in the Offer –** The offer may be conditional but the conditions or special terms must be clearly communicated in the offer. Whenever an offer has special terms attached to it, these special terms and conditions must be effectively communicated to the offeree to bind him.

8. **Offer should not contain a term, the non-compliance of which may be assumed to amount to acceptance –** A person cannot say that if acceptance is not communicated within a certain time, the offer would be considered as accepted. For eg. A writes to B, "I will sell you my horse for Rs.500, and if you do not reply, I shall assume you have accepted the offer," if B does not reply there is no contract. The promise has to expressly convey his/her acceptance.

Q. Define the term 'Acceptance' and explain Rules thereto.

Section 2(b) defines acceptance as **–** "When a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise." Acceptance is an expression by the Offeree of his willingness to be bound by the terms of the offer.

Acceptance may be ***express*** or ***implied***. It is express when it is communicated by words spoken or written or by doing some required act. It is implied when it is to be gathered from the surrounding circumstances or the conduct of the parties.

For eg. At an auction sale, S is the highest bidder. The auctioneer accepts the offer by striking the hammer on the table. This is an implied acceptance.

When an offer is made to a particular person it can be accepted by him ***alone***. If it is accepted by any other person, there is no valid acceptance. When an offer is made to the world at large (eg. Advertisement in newspaper by A to give prize to the person finding his son), any person or persons with notice of the offer may come forward and accept the offer.

Rules as to Acceptance –

1. **It must be absolute and unqualified –** An Acceptance, in order to be binding, must be absolute and unqualified of all the terms of the offer, whether material or immaterial, major or minor.

   For eg…A offers to sell his land for Rs.10 Lacs. B accepts the offer and encloses a cheque for Rs.5 Lacs and promise to pay the balance by 10 monthly installments of Rs. 50,000 each. *Held*, there was no contract between A and B as the acceptance was not unqualified.
2. **It must be communicated to the Offeror –** The acceptance must be communicated in some acceptable form to the person making offer to conclude a contract. A mere mental determination or communication to some third party does not constitute communication.

   For eg. A draft agreement relating to supply of coal was sent to a manager of a Railway Company for his acceptance. The manager wrote the word 'approved" and put the draft in the drawer of his table intending to send it to the Company's solicitor for drawing up a formal contract. Due to oversight the document remained in the drawer. *Held*, there was no contract. ***[Brogden v. Metropolitan Rail. Co,***].

   However, in some cases the offeror may dispense with the communication of acceptance. It happens when the performance of certain conditions takes place or some required act is done,

   For eg, Carbolic Smoke Ball Co. advertised in the newspaper that it would pay 100$ to anyone who contracts influenza after using the smoke balls of the company according to the printed instructions. Mrs. Carlill bought the smoke balls and used it as per the instructions yet contracted influenza. She filed a suit for recovery of the advertised 100$. *Held*, she was entitled to the amount as she had accepted the offer by fulfilling the terms of the offer. [***Carlill vs. Carbolic Smoke Ball Co.,***]
3. **It must be expressed according to the mode prescribed or usual and reasonable mode –** If the acceptance is not according to the mode prescribed, the offeror may, within a reasonable time after the acceptance is communicated to him insist that his proposal shall be accepted in the prescribed mode. However if no mode is prescribed the acceptance may be in a usual or reasonable mode.

4. **It must be given within a reasonable time –** If no time is specified the acceptance must be within a reasonable time. The reasonability of the time shall depend on the ordinary course of trade and business. However if a time limit is prescribed acceptance must be within the specified time.
5. **It cannot precede an offer –** Acceptance always follows an offer. Without the knowledge of offer there is no acceptance.
6. **Mere silence is not acceptance –** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer. For eg. A writes to B, "I will sell you my horse for Rs.500, and if you do not reply, I shall assume you have accepted the offer," if B does not reply there is no contract. The promise has to expressly convey his/her acceptance.
7. **It must show an intention on the part of the acceptor to fulfill the terms of the promise –** The acceptor of the offer must be ready and prepared to be bound by the conditions of the offer and to fulfill the offer. If no such intention is present the acceptance is not valid.

Q. What is consideration ? Explain & state in particular whether inadequacy of consideration shall make a contract invalid.

Section 2 (d) of Indian Contract Act, 1872, defines consideration as "When at the desire of the promisor the promise or any other person has done or abstained from doing or does or abstains from doing something, such act abstinence or promise is called a consideration for the promisor."

Consideration is an advantage or benefit which moves from one party to another. It is the essence of bargain. It is the reciprocal promise i.e to do something or abstain from doing something in return of a promise. It is necessary for an agreement to be enforceable by law. In consideration both the parties give something & get something in return. It may be in cash or kind.

The following are the rules related to the consideration :-

1) Consideration must move at the desire of promisor. If it is done at the instance of a third party without the desire of the promisor, it is not consideration. Act done at the desire of a third party is not a consideration. Act must be done voluntarily at the desire of the promisor.
2) It may move from the promisee or any other person in the Indian Law so that a stranger to the consideration may maintain a suit. A consideration may move from the promise or any other person. Consideration from a third party is a valid consideration. Under English Law, however, consideration must move from the promisee only.
3) Consideration may be past, present or future. The words used in Section 2(d) are "has done or abstained from doing (past), or does or abstains from doing (present), or promises to do or to abstain from doing (future) something" This means consideration may be past, present or future.
4) There must be mutuality in consideration.

5) It must be real & not illusory, infinite or vague. Although consideration need not be adequate, it must be real, competent and of some value in the eye of law. Physical impossibility, legal impossibility, uncertain consideration & illusory consideration.
6) Consideration must not be unlawful, illegal, immoral or opposed to public policy. The consideration given for an agreement must not be unlawful. Where it is unlawful, the courts do not allow an action on the agreement.
7) Consideration need not be adequate. Consideration as already explained means "something in return". This "something given". The law simply provides that a contract should be supported by consideration. So long as consideration exists, the courts are not concerned as to its adequacy, provided it is of some value. "The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the court when it is sought to be enforced."

Q. 'A stranger to a contract cannot sue or be sued'. Explain with exceptions.

As a general rule of law only those persons who are parties to contract may sue or be sued on that contract. There are two consequences on this rule :

1) A doctrine of 'privity of contract' which means relationship subsisting between the parties who have entered into contractual obligations.
2) A contract cannot confer rights or impose obligations arising under it on any person other than the parties to it. Thus, if there is a contract between A and B, C cannot enforce it..

In ***Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & co. Ltd.,*** S bought tyres from the company on the condition that S will not sale below company's sale price failing which S will pay damages. S sold the tyres to B a sub-dealer who sold the tyres below the stipulated price. Company sued B for damages. It was held that the Company was stranger to the contract and therefore, could not maintain the suit.

Exceptions – Under Indian Law, the following are the exceptions wherein a stranger to a contract can sue or be sued :

1. **A trust or charge –** A person in whose favour a trust or other interest in some specific immovable property has been created may enforce it even though he is not party to the contract.

For e.g. A has created a trust for granting ten scholarships yearly for students going abroad for further studies. Merit being only the criteria for selections. X qualifies for the scholarships but is rejected on the basis of community. He can bring an action as a beneficiary under the trust.

2. **Marriage settlement, partition or other family arrangements –** Where an agreement in connection with marriage, partition or other family matters and a provision is made for the benefit of the person , he may sue although he is not the party to the agreement.

   For e.g. A had a son SA and B had a daughter DB. A agreed with B that in consideration of the marriage of DB with SA, he would pay to DB, the daughter-in-law, an allowance of Rs.500 a month in perpetuity. He charged certain properties with the payment. *Held*, DB, although not a party to contract, was entitled to file a suit and recover the arrears of the allowance. (***Khawja Mohd. Khan v. Hussaini Begum)***.

3. **Acknowledgement or estoppel –** Where the promisor by his conduct , acknowledges or otherwise constitutes himself as an agent of third party, a binding obligation is thereby incurred towards him.

For e.g. A gives to B Rs.10,000 to be given to C. B informs C , that he is holding the money for him. Later on B refuses to pay the money to C. C is entitled to recover the money from B. B would be estoppeled from denying his liability as he has already acknowledged the same.

4. **Assignment of a contract –** The assignee of the rights and benefits under a contract not involving personal skill can enforce the contract subject to the equities between the original parties.

For e.g. the Official Receiver can realize money from the debtors of the firm, though he is not a party to the credit agreement between the debtors and the firm.

5. **Contracts entered into through an agent –** The principal can enforce the contracts entered into by his agent provided the agent acts within the scope of his authorities and in the name of the principal.

Q. Explain the exceptions to the rule 'No consideration no contract'.

The general rule is that an agreement made without consideration is void. Section 25 deals with the exceptions to this rule. In such cases the agreements are enforceable even though hey are made without consideration. These cases are :-

a) **Love and Affection [Section 25(1)] –** Where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in a near relation to each other, it is enforceable even if there is no consideration.

   For eg. *F*, for natural love and affection, promises to give his son *A*, Rs. 1 Lac. *F* puts this promise in writing and registers it. This is a contract.

   S Hindu husband, after referring to quarrels and disagreement between him and his wife executed a registered coument in favour of his wife agreeing to pay her for maintainence, but no consideration moved from the wife. *Held*, the agreement was void for want of consideration as the essential condition 'natural love and affection' was missing. ***(Rajlukhy debee V. Bhootnath)***

A man makes an agreement with a prostitute for giving her Rs. 1 Lac, puts it in writing and registers it. He maintains that he has done so on account of natural love and affection. *Held,* there is no natural love and affection for the prostitute and the contract is void.

b) **Compensation for voluntary services [Section 25(2)]–** A promise to compensate wholly or part a person who has already voluntarily done something for the promisor, is enforceable, even though without consideration. A promise to pay for a past voluntary service is binding.
For eg. A says to B' At the risk of your life you saved me from a serious accident. I promise to pay you Rs.1,000." There is a contract between A and B even though there is no consideration.

c) **Promise to pay a time barred debt [Section 25(3)] –** A promise by a debtor to pay a time barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent generally or specifically authorized in that behalf. The debt must be such "of which the creditor might have enforced payment but for the law for limitation of suits"
For eg. D owes C Rs.1,000 but the debt is barred by the Limitation Act. D signs a written promise to pay C Rs.500 on account of the debt. This is a valid contract.

d) **Agency (Section 185) –** No consideration is necessary to create an agency.

e) **Completed Gift (Explanation 1 to Section 25) –** The rule 'No consideration no contract' does not apply to completed gifts. This rule shall not affect the validity, as between donor and donee, of any gift actually made.

Q. Explain the rules relating to Contracts by a minor.

The position of minor as regards his agreements may be summed up as under :-

1. ***An agreement with or by a minor is void and inoperative ab initio-*** The Privy Council affirmed this view most emphatically in *Mohiri Bibi v. Dharmodas Ghose,* in this case, a minor mortgage his house in favour of a money-lender to secure a loan of Rs. 20,000 out of which the mortgagee (the money-lender) paid the minor a sum of Rs.8,000. Subsequently the minor sued for setting aside the mortgage, stating that he was underage when he executed the mortgage. *Held,* the mortgage was void and. Therefore, it was cancelled. Further the money lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.
2. ***He can be a promise or a beneficiary*** - Incapacity of a minor to enter into a contract means incapacity to bind himself by a contract. There is nothing which debars him from becoming a beneficiary, e.g. a payee [*Sharafat Ali v. Noor Mohd.*], endorsee or a promise in a contract. Such contracts may be enforced at his option, but not at the option of the other party. The law does not regard him as incapable of accepting a benefit.
3. ***His agreement cannot be ratified by him on attaining the age of majority***. "Consideration which passed under the earlier contract cannot be implied into the contract into which the minor enters on attaining majority." [*Nazir Ahmed v. Jiwan Dass*]. Thus consideration given during minority is no consideration. If

it is necessary a fresh contract may be entered into by the minor on attaining majority, provided it is supported by fresh consideration.

4. ***If he has received any benefit under a void agreement, he cannot be asked to compensate or pay for it. Sec. 65 which provides for restitution in case of agreements discovered to be void does not apply to a minor.***
5. ***He can always plead minority* –** Even if he has, by misrepresentation tenting his age, induced the other party to contract with him, he cannot be sued either in contract or in tort for fraud because if the injured party were allowed to sue for fraud, it would be giving him an indirect means of enforcing the void agreement.
6. ***There can be no specific performance of the agreement entered into by him as they are void ab ignition*.** A contract entered into on his behalf by his parent/guardian or the manager of his estate can be specifically enforced by or against the minor provided the contract is (a) within the scope of the authority
7. ***He cannot enter into a contract of partnership*.** But he may be admitted to the benefits of an already existing partnership with the consent of the other partners. For a detailed discussion of minor as a partner refer to the chapter on Law of Partnership.
8. ***He cannot be adjudged insolvent*.** This is because he is incapable of contracting debts.
9. ***He is liable for 'necessaries'*** supplied or necessary services rendered to him or minor dependants. This is discussed under the next heading in this chapter.
10. ***He can be an agent*.** An agent is merely a connecting link between his principal and a third party. As soon as the principal and the third party are brought together, the agent drops out. A minor binds the principal by his acts without incurring any personal liability.
11. ***His parents/guardian are/is not liable for the contracts entered into by him***, even though the contract is for the supply of necessaries to the minor. But if the minot is acting as an agent for the parents/guardian the parents/guardian shall be liable under the contract.

Minor's liability for necessaries – Section 68 provides that a minor is liable to pay out of his property for 'necessaries' supplied to him or to his minor dependants whom is legally bound to support. It is important to note here that it is only the minor's property which is liable for meeting the liability arising from such contracts and the minor is not personally liable. Necessaries would include –

a) necessary goods that are (i) suitable to the position and financial status of the minor, and (ii) necessaries both at the time of sale and at the time of delivery. For eg. An engagement ring may be a necessary, but not a vanity bag bought for the minor's fiancée.

b) Services rendered that are required for the living and maintenance of the minor. eg. Education, training for a trade, legal advice, etc.

Q. Define 'consent' and explain when a consent is 'free consent'?

Section 13 defines consent as "Two or more persons are said to consent when they agree upon the same thing in the same sense." Consent of the parties means, the aprties to a contract must mean the same thing in the same sense. It means *'Consensus ad idem'*. For eg. A has 2 cars – Maruti 800 and Maruti Zen. A offers to sell the Maruti 800 while B accepts the offer thinking the car to be sold is Maruti Zen. Here there is no consent.

Free consent refers to consent which has been rendered by free will of the parties i.e. consent is voluntary. Section 10 of the Act, specifically states that a contract is valid and enforceable if it is made with the free consent of the parties.

Section 14 defines 'Free Consent' as –

Consent is said to be free consent when it is not caused by –

1) Coercion, as defined in Section 15, or
2) Undue influence, as defined in Section 16, or
3) Fraud as defined in Section 17, or
4) Misrepresentation as defined in Section 18, or
5) Mistake, subject to the provisions of Sections 20, 21 and 22.

From the above definition, a consent of either party if obtained by any one of the above factors, will result in flaw in the consent.

Q. Write short notes on

A] Coercion

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, 'coercion' is said to have been employed. **Section 15** of the Indian Contract Act, 1872 defines coercion as – "committing or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

Explanation - It is immaterial whether the Indian Penal Code is or in not in force in the place where the coercion is employed.

Coercion includes fear, physical compulsion and menace of the goods.

For eg. A threatens to shoot B if B does not release A from the debt which he owed. B releases A under the threat. The release has been brought about by coercion and therefore voidable at the option of B.

The essential features of coercion are :-

1. **Committing or threatening to commit any act –** In order to establish coercion, there must be an act of force or a threat of force.

For eg. An agent refused to hand over the account books of the principal, unless the principal released him from all liabilities. This amounted to committing an act of coercion.

2. **The act must be forbidden by the Indian Penal Code –** All acts committed or threatened to be committed would not amount to coercion. Eg. A parent unplugging the T.V. would not amount to coercion. Only those acts which are not permitted by IPC alone if used or threatened to be used amount to coercion.
3. **Coercion may be exercised over person or property –** Coercion may be directed against person or property.
4. **Coercion can be exercised even by stranger -** The threat amounting to coercion need not necessarily proceed from a party to the contract. It may proceed even from a stranger to the contract.
5. **Coercion can be against the contracting or some other person –** Coercion may be directed against anybody and not necessarily on the other contracting party.
6. The act of coercion must be done with the intention of causing the other party to enter into a contract.

B] Undue influence

Undue influence is the term used to demonstrate unfair use of one's position or power. There is once party who is in a dominant position, while the other party is in a sub-ordinate position. The dominant party exercising its influence over the subordinate party and getting an unfair advantage. Unlike Coercion where there is physical pressure, in undue influence, there is mental pressure.

Section 16 defines as **–** " Where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

A person is deemed to be in a position to dominate the will of another :

1. Where he holds a real or apparent authority over the other. For eg. The relationship between master and servant.
2. Where he stands in a fiduciary relation (relation of trust and confidence) to the other. It is supposed to exist, for eg. Between father and son, solicitor and client.
3. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress. For eg. The medical attendant and a doctor.

C] Fraud

Fraud means cheating. It is intentionally stating something untrue as true. **Section 17** defines Fraud as "Fraud means and included any of the following acts committed by a party to a contract or with his connivance, or his agent, which intent to decided another party thereto or his agent, or to induce him to enter into a contract."

The essentials conditions of Fraud :

1. **The fraudulent act must be committed by a party to the contract –** The act of fraud must be committed by the party to the contract or with his connivance or by his authorised agent. Fraud committed by third party will not affect the validity of the contract.
2. **False representation –** There must be a false representation. This false representation must be made intentionally. A person making a false statement is not guilty of fraud if he honesty believes in its truthfulness.
3. **Representation as to fact –** The false representation must be of fact. Mere opinion, expression of intention will not amount to fraud. For eg. A says to B that the house is lucky and worth Rs. 10 Lacs. B buys the house but later on comes to know that the house is worth only Rs. 9 LAcs. B wants to bring an action against A. Held, it was expression of opinion and not a fact and therefore not a fraud.
4. **Actually deceived –** In order to constitute fraud, the innocent party must have been actually deceived. If not deceived than the act would not amount to fraud.
5. **Suffered Losses –** The party who has been deceived must suffer a loss. If there is no loss, it will not give rise to an action for fraud.

Mere silence as to facts, likely to affect the willingness of a party to enter into a contract is not fraud, as no party is under obligation to disclose the whole truth to the other party. However there are some exceptions to the rule 'mere silence is not fraud'. They are

a) If there are such circumstances which requires full disclosure then it is the duty of the person to speak and not remain silent. This duty exist in case fiduciary relationship.
b) Where silence is equivalent to speech.

D] Misrepresentation

Section18 defines misrepresentation as – "a false representation a fact made innocently or non disclosure of a material fact without any intention to deceive the other party."

The essential features of misrepresentation are

1) **Party to the contract making misrepresentation –** The false statement must be by the party to the contract or by his agent or by his connivance. Further it must be addressed to the party who is misled. If not address to the party who has been misled it will not be misrepresentation.

   For e.g. X who had purchase shares from the first allottee, sued the company on the ground of having purchase shares on the basis of false statement in the prospectus. *Held*, the prospectus was addressed to the first applicants for shares. It could not be supposed to extent to the other. Hence no misrepresentation (*Peek v. Gurny).*
2) **False representation –** The statement made by the party must be false, but the person making statement must honestly believe it to be true.
3) **Representation as to fact –** it is very important that the false statement made must be of material facts. A mere expression of once opinion is not statement of facts.

4) **Object** – The representation must be made with the view to inducing the other party to enter into a contract but having no intention to deceive the other.
5) **Actually acted upon –** The innocent party must have actually acted on the basis of the statement which turns out to be false.

Q. Explain briefly the contracts specifically declared to be void under the Indian Contract Act.

The following kinds of agreements are expressly declared to be void :-

1) Agreement made by incompetent person, For e.g. minor, a person of unsound mind
2) Agreement made under mutual mistake as to matter of fact essential to the agreement.
3) Agreement made under mistake as to a law not enforce in India.
4) Agreement, the consideration or object of which is unlawful in part or in full.
5) Agreement made without consideration.
6) Agreement in restraint of marriage – Every agreement in restraint of the marriage of any person other than the minor is void. Every adult person has a right to get married and that to has a right to exercise his choice.
7) Agreement in restraint of trade – Every agreement by which anyone is restraint from exercising a lawful profession, trade or business of any kind is to that extent void.
8) Agreement in restraint of legal proceedings – Every agreement which restricts, whether wholly or partly, the enforcing of rights in a court of law or every agreement limiting the time allowed by Law of Limitation shall be void. Every individual has a right to sue in any court and enforce his rights within the time allowed by the limitation act. The following are the exceptions to this rule :-
    a) An agreement to refer any dispute to arbitration is permissible.
    b) An agreement restricting the right of other party to sue in a particular court is permissible.
9) Agreement, the meaning of which is uncertain.
10) Agreements by way of wager.
11) Agreements contingent on an uncertain future event, if the event becomes impossible.
12) Agreements contingent on an impossible event.
13) Agreements to do the impossible act.
14) Agreements to do an act which subsequently becomes impossible.

Q. Explain the various modes of discharge of a contract?

A Contract is said to be discharged when the rights and obligations created by it come to an end. A contract may be discharged in the following modes:-

1. **Discharge by performance –** Discharge by performance takes place when the parties to a contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Performance may be actual performance or attempted performance.

2. **Discharge by Agreement or Consent –** A Contract comes into existence by an agreement and it may be discharged also by an agreement. The following are modes of discharge of a contract by an agreement –
   a) By Waiver – Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. For eg. A an actor promised to make a guest performance in the film made by B. Later B forbids A from making the guest appearance. B is discharged of his obligation.
   b) By Novation – (Explained in detail in the next answer)
   c) By Rescission – Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur by mutual consent or where one party fails in the performance of his obligations, the other party may rescind the contract.
   d) By alteration – Alteration of a contract may take place when one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract.
   e) By Remission – Remission means acceptance of a lesser fulfillment of the promise made, Eg. Acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt.
   f) By Merger – Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. For eg. P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.
3. **Discharge by impossibility of performance** – If a contract contains an undertaking to perform an impossibility, it is ***void ab initio***. As per Section 56, impossibility of performance may fall into either of the following categories –
   (i) Impossibility existing at the time formation of the contract – This is know as pre-contractual impossibility. The fact of impossibility may be –
   a) known to the parties – Both the parties are aware or know that the contract is to perform an impossible act. For eg. A agrees with B to put life into dead wife of B, the agreement is void.
   b) unknown to the parties – Both the parties are unaware of the impossibility. The contract could be on the ground of mutual mistake of fact. For eg.A contract to sell his house at Andaman to B. Both the parties are in Mumbai and are unknown to the fact that the house is actually washed away due to Tsunami.
   (ii) Impossibility arising subsequent to the formation of the contract – Where impossibility of performance of the contract is caused by circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation arising under the contract.
4. **Discharge by lapse of time** – The Limitation Act, 1963 lays down certain specified periods within which different contracts are to be performed and be enforceable. If a party to a contract does not perform, action can be taken only within the time specified by the Act. Failing which the contract is terminated by lapse of time.

   For eg. A sold a gold chain to B on credit without any period of credit, the payment must be made or the suit to recover it, must be instituted within three years from the date of delivery of the instrument.

5. **Discharge by Operation of Law –** A contract may be discharged independently of the wished of the parties i.e. by operation of law. This includes discharge –
   a) **By death –** In contract involving personal skill or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.
   b) **By insolvency –** When a person is declared insolvent, he is discharged from all liabilities incurred prior to such declaration.
   c) **By unauthorized material alteration of the terms of a written agreement –** Any material alteration made by a party to the contract, without the prior permission of the other party, the innocent party is discharged.

   d) **By rights and liabilities becoming vested in the same person –** When the rights and liabilities under a contract vests in the same person.
6. **Discharge by Breach of Contract –** A breach of contract occurs when a party thereto without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. A breach to a contract occurs in two ways :-
   a) **Actual Breach –** When a party fails, or neglects or refuses or does not attempt to perform his obligation at the time fixed for performance, it results in actual breach of contract. For eg. A promises to deliver 100 packs of ice-cream to B on his wedding day. A does not deliver the packs on that day. A has committed actual breach of the contract.
   b) **Anticipatory Breach** - Anticipatory Breach is a breach before the time of the performance of the contract has arrived. This may take place either by the promisor doing an act which makes the performance of his promise impossible or by the promisor , in way showing his intention not to perform it.